Filed 1/18/19 In re Jesse H. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JESSE H. et al., Persons Coming Under the Juvenile Court Law.	B285330 (Los Angeles County Super. Ct. No. CK82610)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RENEE B. et al., Defendants and Appellants.	

APPEALS from an order of the Superior Court of Los Angeles County, Steff Padilla, Commissioner. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant Renee B.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant Richard H.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine Miles, Acting Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

Renee B. (mother) and Richard H. (father) appeal from the juvenile court's order terminating their parental rights to Jesse H. (born November 2013) and Isaac H. (born September 2015). They contend that the juvenile court erred by denying mother's petition for modification (Welf. & Inst. Code,[1] § 388), by declining to place the children with their maternal grandmother (MGM) under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)), and by failing to apply the parental relationship, sibling relationship, or Indian child exception to adoption (§ 366.26, subd. (c)(1)(B)). We discern no juvenile court error and so we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

I. Mother's two older children

Mother lost custody of her two older children, D.J. (age 18) and M.J. (age 17), in part because of her drug abuse and failure to participate in a treatment program. M.J.'s father was awarded sole legal and physical custody of him. MGM and her husband became D.J.'s legal guardians.

II. 2014—Jesse H.'s dependency

The Department of Children and Family Services (Department) received a referral about Jesse H. shortly after his

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

birth. Mother agreed to participate in voluntary family maintenance services but denied the social worker access to the baby. Unable to locate mother and child, the Department obtained an order detaining him at large. Father's whereabouts were also unknown.

Jesse H. surfaced in June 2014 when father was arrested for violating parole. The child was with father in the car at the time of the arrest. Though mother was not present, the police recovered her purse containing a methamphetamine pipe from the vehicle's back seat.

Neither MGM nor any extended, maternal-family member was able to care for Jesse H. for more than a month. MGM hoped that the Department would place him instead with paternal relatives, as she had a "full plate" caring for D.J.

The juvenile court sustained a petition finding true that mother's history of illicit drug abuse rendered her incapable of regularly caring for Jesse H., and remedial services had failed to resolve the problem. (§ 300, subd. (b).) The court removed Jesse H. from his parents' custody (§ 361, subd. (c)), awarding the parents reunification services and monitored visits. The court ordered the Department to place Jesse H. with the paternal great aunt, Joann Y.

III. 2015—the parents regain custody

The juvenile court awarded mother and father unmonitored visits, including overnights, on the condition that mother tested clean and the parents complied with their case plans. By February 2015, both parents had completed three of six months of sobriety programs.

Visits gradually liberalized. Jesse H. visited his parents in their inpatient sobriety facilities and, after the parents were no

longer inpatients, he saw them at the home of paternal grandmother (PGM). He also had overnight stays at MGM's home where he spent time with his older half-siblings, D.J. and M.J. Parental visits went well, although the baby was more playful with father.

In May 2015, the juvenile court placed then 18-month-old Jesse H. with his parents under the Department's supervision, on the condition that the parents resided with PGM and tested clean on demand.

IV. Isaac H.'s dependency; Jesse H.'s supplemental petition

The parents did not comply with the conditions of custody. Despite being ordered to live with PGM, in September 2015, mother moved to MGM's house to give birth to Isaac H. and then moved with the newborn to the home of paternal cousin Sarah Y., without notifying the Department. When Isaac H. was 12 days old, the parents disappeared, leaving Isaac H. with Sarah Y., and Jesse H. with Joann Y. PGM notified the Department that mother had left her house against court orders. Upon returning, the parents ignored multiple demands to drug test and avoided the social workers. Father was arrested in a drug bust that same month.

The Department filed a petition on behalf of baby Isaac H. (§ 300, subd. (b)), followed soon thereafter by a supplemental petition for Jesse H. (§ 387). The allegations were that the parents had left the children with relatives without making appropriate plans (§ 300 subd. (b)).

In connection with Isaac H.'s petition, mother notified the juvenile court that she was or may be an enrolled member of the Fernandeño Tataviam Band of Mission Indians (the Tribe). Until then, mother had denied Indian heritage and the juvenile court

had repeatedly found that ICWA did not apply to the dependencies of her older three children.

The juvenile court sustained the petitions. After having been in his parents' custody for only six months, two-year-old Jesse H. returned with Isaac H. to Joann Y. The court awarded father, but not mother, reunification services. The parents visited the children six times between October 2015 and the end of December 2015.

V. 2016

A. *The parents are arrested and father's reunification services are terminated*

Mother attended a Department meeting in January 2016 and then severed all contact with the social worker. Over the ensuing six months, father responded four times to the social worker's weekly text messages and refused to drug test. PGM informed the Department that mother was homeless and father " 'wants to be with her.' " Still, the parents visited the children at the home of Joann Y., who reported that Jesse H. preferred to spend time with father, but that the visits occurred without incident.

Mother was arrested for identity theft (Pen. Code, § 530.5, subd. (a)) in June 2016. Upon her release in October 2016, she entered an inpatient sobriety program. The children visited her in jail and in her rehabilitation program.

Father's visits ceased when he was arrested for taking a vehicle without permission (Veh. Code, § 10851, subd. (a)) in July 2016 and sentenced to state prison. The juvenile court terminated father's reunification services, having already denied mother services, and scheduled the permanent planning hearing (Welf. & Inst. Code, § 366.26).

The Department's ICWA Unit learned from tribal President Rudy Ortega that MGM was enrolled with the Tribe and served on its elder council. The Tribe is not recognized by the federal Bureau of Indian Affairs.

B. *ICWA*

In the fall of 2016, President Ortega informed the Department that the Tribe had no concerns about Jesse H. and Isaac H., and would not be removing them from Joann Y., as long as she entered into a cooperative agreement with MGM, the Indian relative. President Ortega agreed with the proposed permanent plan of adoption by Joann Y.'s family, who are not members of the Tribe. President Ortega reiterated the Tribe's support for adoption by Joann Y. a month later. The boys were registered and enrolled with the Tribe by late November 2016. President Ortega asked that the Tribe participate in further court proceedings, " 'to ensure cultural wellbeing.' "

C. *Mother files her first section 388 petition for modification*

Mother filed a section 388 petition when she was released from jail in November 2016, asking the court to make "further ICWA inquiries for the children" and to give her reunification services. Mother asserted that Jesse H. and Isaac H. were enrolled in the Tribe and that she had completed various programs. The juvenile court granted mother a hearing.

Ten days later, President Ortega wrote the juvenile court to ask the court to " 'revisit and take an action plan for reunification' as to the mother." He noted that D.J. and M.J. had participated in tribal functions with MGM, and that mother had recently visited the Tribe. The President believed mother was

trying to deal with her problems and that it was time for her to make amends and move forward in order to regain custody of her younger children.

VI. 2017—mother's section 388 petitions are denied and parental rights are terminated

A. *The juvenile court denies mother's first modification petition*

In January 2017, the juvenile court transferred the case to a different court to address the question of Indian heritage and to enable the Tribe to participate in the proceedings.

In connection with her modification petition, mother claimed to have been sober for six months. She reported to the Department that she was motivated to reunify after losing her older children. She wanted her children to be in her life. Mother stated she wanted " 'something there to motivate me to do good. . . . Their little faces will motivate me and help me stay focused.' " Mother offered to drug test every day and expressed her desire to get into another inpatient sobriety program; she was currently on a waiting list.

MGM believed mother had changed. Mother called the boys at Joann Y.'s home every day and their interaction was loving. Difficulties in scheduling visitation prompted MGM to get the Tribe involved. MGM was worried about what would happen once father left prison because mother intended to marry him.

In contrast, Joann Y. did not believe mother had made a permanent change. Although mother called the children daily, Joann Y. reported that "[n]one of them talk[ed] to her" and Jesse H. wanted nothing to do with mother. Since father's incarceration, he ceased calling to ask about the children,

although he did send a Christmas card to Jesse H. The boys viewed the parents as merely people who bring gifts. Joann Y. believed that once father was released from prison, the parents would be back on the street doing "the same things."

Meanwhile, the children visited the Indian side of their family, i.e., MGM and their older half sibling D.J., every other Saturday night, without incident, although Jesse H. generally did not want to go there. The boys thrived in Joann Y.'s care and had bonded with her family. Jesse H. was calmer and felt more secure than when he was first placed with her. Isaac H. was a happy baby, eating well and mostly sleeping through the night. The boys met all developmental milestones and were functioning normally. Joann Y. enrolled Jesse H. in Head Start and Isaac H. in early intervention services. She took the boys weekly to the bookstore's story time, to the library, and to the park where they did arts and crafts, and socialized. Both Joann Y. and Jesse H.'s teacher stated that after Jesse H. saw mother, he became " 'more clingy.' " Both boys were "extremely bonded" to Joann Y.'s family, who were committed to providing the children with permanency, and who agreed to allow the children to visit their biological parents.

Mother entered phase I of a long-term residential treatment program in March 2017. According to her counselor, mother played and did activities with the boys during visits.

After a hearing in March 2017, the juvenile court denied mother's petition for modification, finding that the best interests of the children would not be promoted by the proposed change of order.

B. *Mother drops out of her rehabilitation program*

Mother left her sobriety program a month after the hearing, choosing to quit on her own accord rather than to accept the consequences of committing "program infractions." The visitation schedule reverted to that prior to her arrest, namely monitored visits for three hours per week. MGM stated she brought the children to visit mother every other weekend.

C. *Mother's second section 388 petition*

Five months after the denial of her first modification petition on the eve of the permanent planning hearing in August 2017, mother filed her second petition seeking reunification services and "consider[ation of] ICWA laws," or alternatively, that the children be placed in MGM's "native home." Mother asserted that she had been living a clean lifestyle for over a year, had a full-time job, and was living in a stable environment with MGM.

Noting that the second petition raised the same issues and made the same requests as the first, for which the juvenile court had already held a hearing, the court summarily denied it.

VII. The hearing under section 366.26 in August 2017

The juvenile court declared this to be an Indian "heritage" case, not subject to ICWA, because the Tribe was not federally recognized. President Ortega participated in the hearing on behalf of the Tribe. He stated that the only issue he sought to address was to "mak[e] sure the children have culture participation in the foster parents' house."

President Ortega testified that he was very familiar with the case. He had not reached out to Joann Y. to discover whether

she wanted to participate in tribal events, and never asked the social worker to help with transportation. President Ortega was aware that until recently, MGM had not wanted the boys, and had preferred Jesse H. and Isaac H. live with Joann Y. Although MGM brought D.J. and M.J. to tribal activities, and has the boys every other weekend, she had not taken the boys to the Tribe more than once or twice.

Nevertheless, President Ortega believed that the best interests of the children would be placement, if not with mother—which was understandable—then with MGM, because she was a member who participated in tribal activities, or with someone in the tribal community who could ensure the children had a continued cultural connection. He explained that when children do not participate in tribal programs, they are reluctant to do so and find it difficult to understand their tribal culture as adults. He envisioned "working with the Tribe itself . . . to ensure the children have a continued participation." He testified that permanency was the goal, and a post-adoption contract between Joann Y. and the Tribe would be a viable option.

Joann Y. believed it was important for the boys to know their Indian heritage, and was willing to bring the boys to the Tribe. That is why she consented whenever MGM asked to take the boys to a tribal event. Joann Y. was the one who suggested to MGM that Jesse H. attend summer camp with the Tribe. She also encouraged overnight visits with MGM every other Saturday. Joann Y. did not plan to cut MGM or the parents off from the children. Jesse H. called Joann Y.'s house his home.

Mother testified she has a good relationship with Joann Y. She took care of Jesse H. for the first six months of his life; and

later for a short time. Mother had custody of Isaac H. for 23 days.

Father admitted he has no relationship with Isaac H. He testified that he chose to give Jesse H. to Joann Y. rather than to his own mother. But, he did not want Joann Y. to adopt the boys because he blamed her for the children's second removal from his custody after he was arrested. Father took no responsibility for his part in causing that removal.

MGM described her relationship with Joann Y.'s family as "really good," although she was upset with Joann Y. because she felt the latter had promised not to adopt the boys. MGM and Joann Y. have made arrangements for the boys to go with MGM to tribal events for three years. The boys visit PGM for four hours every other weekend, and MGM on the off-weekends for the entire two days.

After two days of testimony, the juvenile court terminated parental rights. The court found the parents failed to demonstrate any exception existed to justify foregoing adoption. The juvenile court was adamant, however, that the boys know their Indian heritage. A plan to achieve that was already in place because MGM has the children every other weekend. The court made it very clear to Joann Y. that it expected the boys to participate in tribal activities and ordered execution of a post-adoption contract to ensure the children had a lifelong commitment to the Tribe. The parents separately appealed.

We will address additional facts related to the analysis of particular contentions.

DISCUSSION

I. Jesse H. and Isaac H. are not Indian children under ICWA or the California Indian child statutes

Underlying the arguments in both parents' appeals is their view that ICWA does or should apply to this dependency proceeding because Jesse H. and Isaac H. are enrolled members of the Tribe. They argue that all orders, from placement on, should have followed ICWA's requirements.

"ICWA applies only to children with the required relationship to a *federally recognized* tribe." (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783, 786, italics added, citing 25 U.S.C. §§ 1903(4), 1903(8); cf. *In re Abbigail A.* (2016) 1 Cal.5th 83, 90.) Likewise, the California Legislature declared its commitment to protecting the essential tribal relationships and the best interests of Indian children by promoting practices in accordance with ICWA (§ 224, subd. (a)). Hence, the Legislature defined "Indian child" and "Indian tribe" by applying the ICWA requirement that the tribe be *federally recognized*. (§ 224.1, subd. (a).)

As President Ortega testified, the Tribe *is not federally recognized*. Hence, Jesse H. and Isaac H. are not Indian children for purposes of ICWA and the California Indian child statutes, and so neither act controls this dependency. Instead, cases such as this, "not involving Indian children [are] subject to the statutes generally applicable in dependency proceedings." (*Abbigail A.*, *supra*, 1 Cal.5th at p. 88.)

Nonetheless, although this case is not governed by ICWA, the juvenile court did arrange for the Tribe to fully participate in the proceedings pursuant to section 306.6. That statute enables juvenile courts to permit non-federally recognized tribes to

contribute to dependency cases involving children who would be Indian children but for the status of the children's tribe. (§ 306.6, subd. (a).) The juvenile court's discretionary decision under section 306.6 to permit President Ortega to participate, however, does not transform this case into one governed by the state or federal Indian child statutes. Section 306.6 declares the Legislative intent that "This section *shall not be construed to make the Indian Child Welfare Act* [citation], *or any state law implementing the Indian Child Welfare Act*, *applicable* to the proceedings." (*Id.*, subd. (d), italics added.)

Acknowledging ICWA's inapplicability, father argues without citation to authority, that the Indian child placement preferences in section 361.31 still applied here and that the record contained no evidence of "good cause" to deviate from the preference for placing Jesse H. and Isaac H. with their Indian relative. Section 361.31 lists obligatory placements in Indian-child adoptions in descending order of priority (*id.*, subd. (c)), and allows the court to determine that good cause exists to decline to follow those preferences (*id.*, subd. (h)). But, the statute applies to "adoptive placement of an *Indian child*" (*id.*, subd. (c)), and Jesse H. and Isaac H. are not Indian children under state or federal law. Therefore, the juvenile court did not err in deciding it was not required to make a good cause finding before ordering adoption by Joann Y., a non-Indian. (Cf. *In re A.A.* (2008) 167 Cal.App.4th 1292, 1328 ["were this a non-Indian child dependency matter, the court properly could refuse to consider a new relative placement request"].)

Furthermore, recently our colleagues in Division Five explained, "in every published case upholding a good cause finding [to depart from the placement preferences of

section 361.31], counsel for the minor either advocated for the finding, was aligned with the party advocating for a finding of good cause, or was silent." (*In re Alexandria P.* (2016) 1 Cal.App.5th 331, 359; *In re A.A.*, *supra*, 167 Cal.App.4th at p. 1292; *Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626.) Here, the children's counsel argued strenuously in favor of adoption by Joann Y. as being in the children's best interests.

II. No abuse of discretion in summarily denying mother's second petition for modification

Mother contends that the juvenile court erred in denying her an evidentiary hearing on her second section 388 petition.

Section 388 enables a parent to petition the juvenile court to change, modify, or set aside a previous court order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The juvenile court must order a hearing when "it appears that the best interests of the child . . . may be promoted" by the new order. (*Id.*, subd. (d).) The parent seeking modification has the burden to make a prima facie showing to proceed by way of a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) " '[T]he parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child's best interests.' " (*In re K.L.* (2016) 248 Cal.App.4th 52, 61.)

"In determining whether the petition makes the required showing, the court may consider *the entire factual and procedural history* of the case." (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 62, italics added.) We review a juvenile court's decision to deny a

section 388 petition without an evidentiary hearing for abuse of discretion. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Mother's first section 388 petition asked the court to award her reunification services because she is a member of the Tribe. As change of circumstances, mother asserted, among other things, that she was working toward sobriety. She also argued, "[i]t is always in the best interest of the children to consider whether ICWA applies." The juvenile court held a contested hearing and denied the petition. The court found that the children's best interests would not be served by giving mother reunification services and delaying permanency for the boys. Mother did not appeal from that ruling.

Mother's second petition for modification was filed *just five months later*, and less than three months *after she dropped out of her sobriety program*. Just as in the first petition, mother's second petition asked for reunification services and "consider[ation of] ICWA laws," and she also requested that the boys be placed with MGM. The reason the juvenile court summarily denied this petition was that it raised the same issues and made the same requests as in the first petition, for which a contested hearing had been held.

The juvenile court did not abuse its discretion. Mother argues at length that it was in the children's best interests for the court to "consider[ ] ICWA laws," or apply the "intent and spirit of ICWA" and grant her a hearing on her modification petition. She made that same assertion in both petitions. Yet, the court, in the exercise of its discretion, already was considering the Tribe's concerns, values, and practices (§ 306.6), in an effort "to promote the stability and security of" the Tribe. (§ 224, subds. (a) & (b).) Mother observes that the Tribe asked

the court to grant her reunification given her sobriety. But, that request came *before the court denied mother's first* petition and so the court had already considered that recommendation. This case had not become an ICWA proceeding in the period between the two 388 petitions and so the court was under no new obligation to reconsider the case under ICWA or to move the boys to a tribal placement, such as with MGM.

Nor did mother demonstrate that the children's best interest would be served by moving the children to MGM and giving mother reunification services. The boys were already spending every other weekend with MGM. The reunification period for a parent of children, such as Jesse H. and Isaac H. who were under the age of three at the time of their removal, is ordinarily limited to 12 months (§ 361.5, subd. (a)(1)(B)) and can be extended up to 18 months under certain circumstances. (§§ 361.5, subd. (a)(3)(A), 366.21, subd. (g)(1).) *This dependency was more than three years old when the juvenile court summarily denied the second petition*. The court's focus therefore, was no longer on reunification but on the children's needs for permanency and stability. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) Mother could not show she achieved long-lasting sobriety; she dropped out of her most recent sobriety program just as she had repeatedly done before. Meanwhile, the boys were thriving in Joann Y.'s care, where Jesse H. had been for over three years and Isaac H. for 18 months. As such, mother's second section 388 petition failed to make a prima facie showing that the requested change in order would serve the children's best interests so as to justify a full hearing. (*In re K.L.*, *supra*, 248 Cal.App.4th at pp. 61–62, italics added.)

III. No error in terminating parental rights

A. *General principles*

" 'The selection and implementation hearing under section 366.26 takes place after the juvenile court finds that the parents are unfit and the child cannot be returned to them.' " (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611.) At that hearing, the court must order one of three dispositional alternatives: adoption, guardianship, or long-term foster care.

Adoption, the only plan that requires the termination of parental rights, *is strongly preferred by the Legislature*. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) Section 366.26 directs, if the court finds that the children are adoptable—a finding neither parent challenges—"the court *shall* terminate parental rights" unless it "finds a compelling reason for determining that termination would be detrimental to the child due to" one of the six statutory exceptions. (§ 366.26, subd. (c)(1) & (c)(1)(B), italics added.) Accordingly, if the children are adoptable, only " 'in *exceptional circumstances*,' " may the court " 'choose an option other than the norm, which remains adoption.' " (*Anthony B.*, at p. 395.)

The parents had the burden to prove the existence of a statutory exception to termination. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*).) We review the juvenile court's assessment whether a beneficial relationship exists for substantial evidence. (*Bailey J.*, at p. 1314; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) We review for abuse of discretion the juvenile court's determination whether the cited relationship constitutes a " 'compelling reason for determining that

termination [of parental rights] would be detrimental.' " (*Bailey J.*, at p. 1314.)

B. *The parental relationship exception to terminating parental rights*

The first exception to termination raised by the parents is based on the parental child relationship. (§ 366.26, subd. (c)(1)(B)(i).) This exception permits the juvenile court to order a permanent plan other than adoption if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid*.)

The phrase "benefit from continuing the relationship" is understood by courts to refer to a parent child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.)

The substantial, positive attachment "from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation" and "arises from day-to-day interaction, companionship and shared experiences." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Factors to consider include " ' " '[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.' " ' " (*In re Breanna S.*, *supra*, 5 Cal.App.5th at p. 646.) Parents asserting this exception meet their burden by showing that they occupied a parental role in the children's lives. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

Relying on *In re I.W.*, *supra*, 180 Cal.App.4th 1517, at page 1529, father argues that he "maintained regular visitation with the children as a matter of law" and, like mother, recites only the evidence that favors reversal. But *I.W.* explained "where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] "*Specifically, the question becomes whether the appellant's evidence was* (*1*) *'uncontradicted and unimpeached' and* (*2*) *'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.'* " (*Id.* at p. 1528, italics added.) The parents' evidence at this lengthy contested hearing was contradicted. Considering the entire record, the juvenile court found that the parents failed to meet their burden of proof. We may not reweigh the evidence, or "reevaluat[e] the conflicting, competing evidence and revisit[ ] the juvenile court's failure-of-proof conclusion." (*Ibid.*)

The record contains substantial evidence that neither parent occupied a parental role in the life of these children, irrespective of the frequency and quality of visits, about which the evidence varies widely. Isaac H. had no relationship with father and did not recognize mother as recently as 2017. The parents summarily abandoned him at the age of 23 days and

have not lived with him since. Father could not identify who bathed Jesse H. and Isaac H., did their laundry, or put them to bed, and did not know whether either child has an allergy. Mother's visits may have been periodically consistent and "pretty fun;" she may have made lunch during visits. Yet, frequent and loving contact, and the existence of an emotional bond with the child is not enough to depart from the statutory preference for adoption. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) The exception is not applied merely because "the child derives some benefit from the relationship." (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) The role must be parental. Neither mother nor father testified they saw to the children's day-to-day needs, attended more than two doctor's appointments, or any of the children's school activities, took Jesse H. to speech therapy, or helped Jesse H. with homework. Moreover, the parents' visits have always been monitored. Recently, the boys had no particular reaction at the end of father's calls or to his correspondence. Jesse H. would refuse to talk to mother on the telephone, and he "didn't want anything to do with her" when she was in her sobriety program. The record contains gaps in visitation. Significant lapses in visitation "fatally undermine" any attempt to establish the parental relationship exception. (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; *In re Grace P.*, *supra*, 8 Cal.App.5th at p. 615.)

In contrast, Jesse H. spent nearly three of his four years, and Isaac H. all but 23 days of his life, with Joann Y., who fulfilled the parental role. The boys were "extremely bonded" with Joann Y.'s family. They referred to Joann Y. as " 'mom,' " and her husband as " 'dad.' " In short, even crediting the parents' descriptions of the quality and frequency of visits, the record

supports the juvenile court's finding that neither parent occupied a parental role in the children's lives. Thus, the parents failed to demonstrate that that this exception to termination applied.[2]

Mother argues that guardianship is a better plan for the boys because she wants to reunify with them. Unfortunately, this case is long past the reunification stage. As our Supreme Court has repeatedly explained, "[i]f there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, *termination of parental rights at the section 366.26 hearing is relatively automatic*." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447, italics added.) The juvenile court did not abuse its discretion by not applying this exception to adoption.

C. *The sibling relationship exception to terminating parental rights*

The next statutory exception to termination advocated by mother applies when adoption would result in a "*substantial* interference with a child's sibling relationship." (§ 366.26, subd. (c)(1)(B)(v), italics added.) To avoid termination of rights,

---

[2] Father's reliance on, and mother's citation to, *In re Jerome D.* (2000) 84 Cal.App.4th 1200, are unavailing. Unlike the boys here, Jerome D. had lived with his mother for the first six and a half of his nine-year life, and expressed his wish to live with her again. Also unlike visits here, Jerome D. was having *unsupervised* overnight visits in his mother's home. (*Id.* at p. 1207.) Moreover, Jerome D. was described as lonely, sad, and the " 'odd child out' " in his foster placement but smiled when he said he wanted to live with his mother. (*Id.* at p. 1206.) At best the boys here have been unaffected by their contact with their parents, and at worst, they viewed the parents merely as people who bring them gifts.

the parents have the burden to show "the existence of a significant sibling relationship, the severance of which would be detrimental to the child." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) The statute directs courts to "tak[e] into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).) If the court finds that termination of parental rights will substantially interfere with a child's sibling relationships, it must "weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption." (*In re L.Y.L.*, at p. 952.)

The boys do have a bond with D.J. and M.J. They see their half siblings every other weekend when they gather at MGM's, where D.J. lives. But, neither boy has ever lived with M.J. and only Jesse H. lived with MGM and D.J., and then only for a month in 2014 when he was a newborn. The strongest sibling relationship is between Jesse H. and Isaac H. who already live together with Joann Y. Further, severing parental rights would not be detrimental to the boys. By mother's own admission, Joann Y. "was willing to maintain contact with Jesse and Isaac's half-siblings" and with MGM. Therefore, the record contains no evidence that adoption would *substantially interfere* with the boys' relationship with D.J and M.J. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293; § 366.26, subd. (c)(1)(B)(v).)

Mother contends that there is "no guarantee" that Joann Y. would continue to maintain the sibling relationship. This argument ignores that it is mother's burden to establish substantial interference, not the Department's burden to show there would be none. (*In re D.O.* (2016) 247 Cal.App.4th 166, 176.) The argument is likewise speculative and unsupported by the record which shows that Joann Y. had maintained the sibling relationship for years and that she agreed to do so in the future. Both MGM and Joann Y. described their relationship as amicable and they have had no trouble scheduling or exchanging the children. Indeed, Joann Y. was under a court order to enter into a contract with the Tribe, which assures that the boys will have a connection with their half-siblings who are also Tribal members.[3]

Finally, mother argues that terminating parental rights "would create unnecessary tension and friction between adults which would make continued contact between relatives more difficult." But family tension and friction is not an exception to adoption. To the contrary, "adoption is preferred because it

---

[3] Father argues that we should consider that D.J. wrote to the juvenile court in her own dependency that she did not want to be adopted while *her* siblings were scattered. The contention is neither cognizable nor meritorious. Father did not rely on the sibling relationship exception below and hence forfeited any appellate challenge to the juvenile court's failure to apply it. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338–1339.) Furthermore, under the sibling relationship exception, the court considers the possible detriment of adoption *to the children being considered for adoption*, Jesse H. and Isaac H., not to the siblings of those children. (*In re Celine R.* (2003) 31 Cal.4th 45, 54.) The court here was considering Jesse H. and Isaac H. for adoption, and so D.J.'s wishes are not relevant.

ensures permanency and stability for the minors" (*In re A.S.* (2018) 28 Cal.App.5th 131, 152) and " 'allows the caretaker to make a full emotional commitment.' " (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 52–53.) The juvenile court did not abuse its discretion by declining to apply the sibling-relationship exception to termination of parental rights.

D. *The Indian child exception to terminating parental rights*

Father contends that the juvenile court erred in failing to apply the Indian child exception. It authorizes the juvenile court to consider whether there is a compelling reason to conclude that termination of parental rights would not be in an Indian child's best interests. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1322.) The exception includes, without limitation, two reasons a court may find compelling: (1) if termination of parental rights would interfere substantially with the children's connection to his or her tribal community or the child's tribal membership rights (§ 366.26, subd. (c)(1)(B)(vi)(I)); (2) if the children's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child (§ 366.26, subd. (c)(1)(B)(vi)(II)).[4]

Whether a compelling reason exists for concluding that termination would be detrimental to an otherwise adoptable child under the Indian child exception is a question committed to the

---

[4] The exception states, "The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to" the two articulated reasons. (§ 366.26, subd. (c)(1)(B)(vi).)

juvenile court's sound discretion. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1322; § 366.26, subd. (c)(1)(B).)

Neither of the two statutory reasons compels application of the Indian child exception to termination. First, adoption would not interfere with the boys' connection to their tribal community. Joann Y. recognized the importance to the boys of knowing their Indian heritage. She was always willing to take the boys to participate with the Tribe, but no one asked her. She consented whenever MGM asked to take the boys to any tribal event and suggested that Jesse H. attend tribal summer camp. She agreed to a post-adoption contract. Joann Y.'s past practice of encouraging tribal involvement and her willingness to continue that involvement demonstrated that adoption would not disrupt the boys' Indian identity.

Second, the Tribe's preference was not an obstacle to adoption. President Ortega was equivocal about the best plan for permanency, but always wanted to ensure that the boys maintained a connection to their heritage. From 2016 through 2017, the Tribe supported adoption by Joann Y. Although President Ortega "lean[ed] towards" guardianship at the hearing, it was because of a conflict among family members, not because of any threat to the children's connection with their Indian heritage. In fact, President Ortega "agree[d] with permanency" as a goal. He stated that a post-adoption contract between Joann Y. and the Tribe was a viable option and that the boys would not lose the right to participate in Tribal events if parental rights were severed.

Father contends that were Joann Y. to adopt, the children would lose their connection to the Tribe because, he argues, the boys were not participating in tribal events and Joann Y. "did not

appear open to attending tribal activities with the children." However, MGM explained that the reason for the boys' lack of involvement in the Tribe was their young ages, not Joann Y. Similarly, the Tribe had some responsibility for Joann Y.'s failure to connect with it. President Ortega acknowledged he never reached out to Joann Y. For her part, the record indicates Joann Y. believed MGM would be the relative to maintain the children's Tribal involvement. The court solved this problem by ordering a post-adoption contract between Joann Y. and the Tribe. In short, there is absolutely no evidence that termination of parental rights would interfere with the children's connection to their tribal community. The juvenile court reasonably concluded that no compelling reason existed that would make adoption detrimental to the children.

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.